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The Honorable Paul Papak

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FRANCISCO AROCHE,

Plaintiff,

v.

**THE ALLSTATE INSURANCE
CORPORATION, dba ALLSTATE
INSURANCE COMPANY,**

Defendant.

NO. CV09-1495-PK

**DEFENDANT ALLSTATE'S
ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS**

Defendant Allstate Insurance Corporation ("Defendant" or "Allstate"), by and through its attorneys of record, answers plaintiff's complaint and asserts affirmative defenses and counterclaims as set forth below. Each allegation not specifically admitted shall be deemed denied.

1.

Denied.

2.

Denied.

3.

Denied, except that Allstate admits that it gave Plaintiff a letter on or about December 19, 2008, stating in part that Allstate was terminating Plaintiff's Allstate R3001S Exclusive Agency Agreement effective immediately for "reasons that include falsification of company documents, misappropriation of funds and improper use of unlicensed support staff."

4.

Allstate admits that it notified Plaintiff that it was holding certain payments pending its investigation into Plaintiff's behaviors and amounts owed by Plaintiff to Allstate. Allstate denies the remaining allegations based upon lack of information.

5.

Denied.

6.

Denied.

7.

Denied.

8.

Denied.

9.

Denied.

10.

This paragraph does not include any factual allegations requiring a response.

11.

Denied.

12.

Denied, except that Allstate admits that Plaintiff sent Allstate a letter dated April 16, 2009 that states "I demand that Allstate pay me all my unpaid wages."

13.

Denied.

PLAINTIFF'S FIRST CLAIM FOR RELIEF AGAINST DEFENDANT
(Unpaid Wages – ORS 652.140, ORS 652.150)

14.

Allstate incorporates and realleges its answers to paragraphs 1 through 13 of the Complaint.

15.

Denied.

16.

Denied.

17.

Denied.

18.

Denied.

19.

Denied.

PLAINTIFF'S SECOND CLAIM FOR RELIEF AGAINST DEFENDANT
(Wage Penalty for Late Payment of Wages – ORS 652.140, ORS 652.150)

20.

Allstate incorporates and realleges its answers to paragraphs 1 through 13 of the Complaint.

21.

Denied.

22.

Denied, except that Allstate admits that Plaintiff sent Allstate letters dated April 16, 2009, and June 11, 2009, in which he alleged that he was owed unpaid wages.

23.

Denied.

24.

Denied.

25.

Denied.

26.

Denied.

27.

Denied.

PLAINTIFF'S THIRD CLAIM FOR RELIEF AGAINST DEFENDANT
(Wrongful Withholding of Wages – 652.610, 642.615)

28.

Allstate incorporates and realleges its answers to paragraphs 1 through 13 of the Complaint.

29.

Denied.

30.

Denied.

31.

Denied.

32.

Denied.

33.

Denied.

PLAINTIFF'S FOURTH CLAIM FOR RELIEF AGAINST DEFENDANT
(Breach of Contract)

34.

Allstate incorporates and realleges its answers to paragraphs 1 through 13 of the Complaint.

35.

Denied, except that Allstate admits that Plaintiff and Allstate entered into Allstate's R3001S Exclusive Agency Agreement effective January 1, 2008.

36.

Admitted.

37.

Denied.

38.

Denied.

39.

Denied.

40.

Denied.

41.

Denied.

42.

Denied.

PLAINTIFF'S FOURTH (sic) CLAIM FOR RELIEF AGAINST DEFENDANT
(Breach of the Covenant of Good Faith and Fair Dealing)

43.

Allstate incorporates and realleges its answers to paragraphs 1 through 13 of the Complaint.

44.

Denied, except that Allstate admits that Plaintiff and Allstate entered into Allstate's 3001S Exclusive Agency Agreement on January 1, 2008, and that under this Agreement Plaintiff agreed to perform certain services for Allstate and Allstate agreed to pay Plaintiff for those services.

45.

This paragraph does not include any factual allegations requiring a response.

46.

Denied.

47.

Denied.

48.

Denied.

49.

Allstate denies that Plaintiff is entitled to the relief requested in paragraph 49 of the Complaint, or to any relief.

DEFENDANT ALLSTATE'S AFFIRMATIVE DEFENSES

1.

Plaintiff's claims should be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiff fails to state a claim upon which relief can be granted.

2.

Allstate is not liable to Plaintiff because Plaintiff was at all times an independent contractor, not an employee of Allstate.

3.

Any withholding of payments from Plaintiff was done in good faith, based upon a bona fide dispute regarding Plaintiff's right to such payments.

4.

Any payments owed by Allstate to Plaintiff are subject to offset by amounts owed by Plaintiff to Allstate.

5.

Allstate is not liable to Plaintiff because Plaintiff breached his contract with Allstate.

6.

Plaintiff's claims are barred by the doctrine of unclean hands.

7.

Plaintiff's recovery of damages, if any, should be limited by Plaintiff's failure to mitigate the same.

8.

Allstate reserves the right to add additional defenses as discovery proceeds and the evidence develops.

ALLSTATE'S COUNTERCLAIMS

1.

The counterclaims set forth herein are compulsory counterclaims under Fed. R. Civ. P. 13(a) because they arise out of the same transactions and occurrences that are set forth in Plaintiff's Complaint.

2.

If jurisdiction is proper with respect to Plaintiff's Complaint, then this Court has jurisdiction over the state law counterclaims asserted herein under the doctrines of ancillary and pendent jurisdiction, and pursuant to the supplemental jurisdiction provisions of 28 U.S.C. §1367(a).

3.

If venue is proper with respect to Plaintiff's Complaint, it is proper with respect to Plaintiff for the purposes of these counterclaims.

4.

Plaintiff and Allstate entered into a R3001 Exclusive Agency Agreement (the "Agreement") effective January 1, 2008.

5.

The Agreement expressly incorporated therein the following additional documents as part of the Agreement: The Supplement for the R3001 Agreement, the Exclusive Agency Independent Contractor Manual, and the Allstate Agency Standards

6.

Allstate performed all of its required duties under the Agreement.

7.

Plaintiff breached the Agreement by falsifying company documents, as prohibited under the Agreement.

8.

Plaintiff breached the Agreement by misappropriating Allstate funds, as prohibited under the Agreement.

9.

Plaintiff breached the Agreement by his improper use of unlicensed support staff, as prohibited under the Agreement.

FIRST COUNTERCLAIM

(Breach of Contract)

10.

Allstate incorporates and re-alleges paragraphs 1 through 9 of its above counterclaims.

11.

Plaintiff's conduct constitutes breach of his Agreement.

12.

As a result of Plaintiff's breach of the Agreement, Allstate suffered harm, in an amount to be proven at trial, but in no event less than the total amount of Plaintiff's agent group banking shortage.

SECOND COUNTERCLAIM

(Breach of Covenant of Good Faith and Fair Dealing)

13.

Allstate incorporates and re-alleges paragraphs 1 through 12 of its above counterclaims.

14.

The Agreement contained an implied covenant of good faith and fair dealing in performance and enforcement of the Agreement.

15.

Plaintiff's conduct constitutes breach of the covenant of good faith and fair dealing implied in the Agreement.

16.

As a result of Plaintiff's breach of the Agreement, Allstate suffered harm, in an amount to be proven at trial, but in no event less than the total amount of Plaintiff's agent group banking shortage.

THIRD COUNTERCLAIM

(Conversion)

17.

Allstate incorporates and re-alleges paragraphs 1 through 9 of its above counterclaims.

18.

Plaintiff intentionally exercised unauthorized dominion and control over certain Allstate company funds, and in so doing, seriously interfered with Allstate's right to control certain company funds.

19.

Plaintiff's conduct constitutes conversion

20.

As a result of Plaintiff's conduct, Allstate has suffered damages in an amount to be proven at trial, but in no event less than the total amount of Plaintiff's agent group banking shortage.

PRAYER FOR RELIEF

WHEREFORE, Allstate respectfully asks that the Court:

1. Dismiss all of Plaintiff's claims with prejudice and without costs against Allstate;
2. Award Allstate its costs and attorneys' fees incurred in connection with Plaintiff's claims; and
3. Order judgment against Plaintiff on Allstate's counterclaims in an amount to be determined at trial, including prejudgment interest, reasonable attorneys' fees, costs, and disbursement incurred herein; and
4. Award such further relief as the Court deems just and equitable.

DATED this 15TH day of January, 2010.

RIDDELL WILLIAMS P.S.

By /s/ Karen F. Jones
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CERTIFICATE OF SERVICE

I hereby certify that on the date below written, I **electronically filed** the foregoing document using the CM/ECF system and caused to be served a true and correct copy of same by the method indicated below and addressed as follows:

David McCaffery, OSB #03396
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Attorneys for Plaintiff Aroche

via email and CM/ECF system
which will send notification of such
filing

DATED this 15th day of January, 2010.

/s/ Susan E. Miller
Susan E. Miller